IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7536 OF 2007

Neha Vaishal Dua ...Petitioner

Versus

Hector Paul Francis ....Respondents

Seema Sarnaik, for the petitioners.

S.Telgote for the respondents.

CORAM: S.C.DHARMADHIKARI, J.

14th December, 2007.

P.C. :

1. This Writ Petition is challenging an Order dated 7.7.2007 passed by the Judge, Third Family court, Pune to the extent it allows Exhibit-15.

2. Exhibit-15 is an Application which is preferred by the Husband who is the respondent before me praying that he wants to meet his son on every Saturday and Sunday and therefore interim custody be granted to him

on every Saturday and Sunday. That Application was made on 26.6.2007 and thereafter the Respondent has pursued his request. It appears that the arguments on that application were heard and enough opportunity was given to parties to file their reply and rejoinder. It appears that there was some ad-interim order also passed. However it is complained, that the wife is in breach of the said order.

3. Be that as it may, the final order that is passed is in the following terms ;

> ". The application Exhibit-15 is allowed. The petitioner is directed to hand over the minor son to the respondent on 1st, 3rd and 5th week end to the respondent-father for overnight accesss. The petitioner to handover the son at 11.00 a.m. before the Marriage Counsellor on 1st, 3rd and 5th Saturday of every month and the respondent is directed to handover the minor son to the petitioner on the following Sunday at 9.00 p.m. at the gate of the petitioner's residence.

4. It appears that although this order was passed on 7.7.2007 the Respondent husband has not been able to have access to the child, leave alone, overnight access. It appears that, save and except, one day i.e on 3.11.2007, the access has not been given thereafter.

5. It also appears from a perusal of the petition and the annexures thereto, that the Wife's Advocate could not remain present. Therefore, the proceedings were taken up and disposed off only in the presence of the petitioner wife but without hearing her advocate. The learned Advocate for the respondent/husband however, was present. The grievance was that the Advocate was in personal difficulty and yet adjournment was opposed and therefore refused by the learned judge.

6. I do not wish to enter into this controversy, inasmuch as, the parties have agreed before me that the order under challenge, insofar as, it decides Exhibit-15 can be quashed and set aside.

7. However, the petitioner's counsel requests that upon restoration of Exhibit-15 before the Family Court that application should be directed to be disposed off expeditiously.

8. The further request is that some ad-interim order may be passed, so as to enable the respondent father to

meet the child.

9. The matter was kept back in the morning session to enable Ms.Sarnaik to take instructions. She submits that without prejudice to the rights and contentions of both sides, the petitioner wife is ready and willing to bring the child, Brian at the Child Care Centre at Family court on Saturday i.e. 15.12.2007 at 11 a.m. and the Respondent can have access to him but he must reach the child back at the same venue at 6 p.m. She submits that this arrangement can continue on every first and third Saturday. Statement accepted.

10. The respondent is agreeable to this course of action pending the hearing of Exhibit-15 and without prejudice to the rights and contentions. Accordingly, the following order is passed. :

(a) The order dated 7.7.2007 below, Exhibit-15, in Petition No.439 of 2007 pending in the Family Court, Pune is quashed and set aside. Exhibit-15 is restored to the file and is directed to be disposed off as expeditiously as possible and within a period of three

months from the first date of appearance of parties.

(b) The petitioner wife not to seek unnecessary adjournments ad co-operate in the hearing and early disposal of the subject application.

11. Till the application is decided, the child Brian, shall be brought on first, third and fifth Saturday to the Child Care Centre at Family Court at Bandra and the Respondent husband shall have access to him from 11 a.m. to 6 p.m. The child should be reached back and handed over to the petitioner/mother or the person authorised by her before me at the same venue. Any breach of this direction shall entail in this court taking appropriate action in accordance with law so also the Trial Court is at liberty to pass necessary orders in accordance with law.

12. This order will be without prejudice to the rights and contentions of the parties in the main petition and Exhibit-15. Petition disposed off.

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